

SECOND JUDICIAL DISTRICT - OGDEN DISTRICT COURT

WEBER COUNTY, STATE OF UTAH

MOLLY J. MULLIGAN, et al.,)
) Case No. 240908957
)
Plaintiffs,)
)
v.) TRANSCRIPT OF:
) TELEPHONE CONFERENCE
)
ALUM ROCK RIVERSIDE LLC, et)
al,)
)
Defendants.)

BEFORE THE HONORABLE NOEL S. HYDE

OGDEN DISTRICT COURT
2525 GRANT AVENUE
COURTROOM #3C
OGDEN, UTAH 84401

MARCH 11, 2025

STATE OF UTAH } ss.
COUNTY OF WEBER

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE
ORIGINAL ON FILE IN MY OFFICE.

DATED THIS 7th DAY OF April 20 25

CLERK OF THE COURT

BY Harkera Heslop DEPUTY



A P P E A R A N C E S

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-ooOoo-

1 March 11, 2025

2 P R O C E E D I N G S

3
4 THE COURT: All right, thank you. And counsel, I
5 appreciate your appearances.

6 This is Mulligan versus Alum Rock Riverside, case
7 number 240908957. Counsel, please note your appearances for
8 your respective clients.

9 MR. TILT: Bradley Tilt, Your Honor, for the
10 Mulligans.

11 MR. JOHNSON: This is Ben Johnson for Alum Rock
12 Riverside.

13 THE COURT: Thank you, counsel.

14 I set this hearing upon receipt of the request to
15 submit, which deals with the proposed order and injunction that
16 were the subject of the prior hearing. I have -- I have
17 received the alternate proposals with respect to the order.

18 The issue that I wanted to make sure is addressed is
19 the impact of the removal on the proceedings with respect to
20 the order and the injunction, and I want to hear from both
21 counsel on that.

22 Legally, once the matter is removed to federal court,
23 no further action is taken in this case. I can certainly
24 understand there's value in having the order actually of-record
25 from the prior proceeding of the court, but I did want to hear

1 from both counsel on that issue before proceeding.

2 So Mr. Tilt, let me hear from you first, and then
3 I'll hear from Mr. Johnson.

4 MR. TILT: Thank you, Your Honor, yes. Normally,
5 under 28 U.S.C. 1446(d), upon the filing of the notice of
6 removal, jurisdiction is exclusively vested in the federal
7 courts.

8 However, there is an exception that has been
9 recognized in case law, including in Pebble Creek Homes versus
10 Upstream Images, 547 F. Supp 2d, page 1214. That's a district
11 of Utah case in 2007, where the court has held that, in
12 circumstances very similar to this, the 1446(d) prohibition to
13 proceed does not intend to cut off the state court from taking
14 ministerial steps that are necessary to document these actions
15 in rulings that it has already taken.

16 The court actually recognized in that Pebble Creek
17 case, at pages 1218 to 1219, that "the entry of an order after
18 --" so there was a hearing held in that case prior to removal,
19 like there was in this case. There was a ruling from the bench
20 at that hearing prior to removal, just like there was in this
21 case. Then the removal was filed after the parties had
22 submitted their proposed orders, but before the court had
23 entered it.

24 And at pages 1218 to 1219 of that case, the district
25 court of Utah said, "Because this final, essentially clerical

1 task in no way affected the merits of the already-adjudicated
2 issue disputed by the parties, the court finds that the state
3 court order does not violate 1446(d). To hold otherwise would
4 enable defendants to effectively nullify dispositive rulings
5 made at state court hearings by rushing to remove the case
6 before the administrative (inaudible) version of the decision,"
7 end quote.

8 I think we're in exactly the same posture that the
9 court found itself in, in the Pebble Creek case, and in that
10 case the court recognized that simply ministerially reducing
11 the court's already-entered ruling to writing is not a
12 violation of 1446, and it upheld the state court order in that
13 case.

14 THE COURT: All right, thank you --

15 MR. TILT: I think that's the same (inaudible) that
16 case.

17 THE COURT: Mr. Johnson, anything you wish to add?

18 MR. JOHNSON: Well, that citation sounds on point.
19 That's not one we found.

20 Our understanding, and this is more of a timing
21 issue, there wasn't any effort to game the decisions, here, but
22 our understanding generally is that jurisdiction is divested
23 upon the removal. I, listening to Mr. Tilt's reading of that
24 case, it sounds fairly on point.

25 The -- they have also filed another motion for

1 preliminary injunction in the federal court. I don't have any
2 particular heartburn with this court entering the order. On
3 the merits of the order we have some disagreements, but
4 otherwise if that -- if that case law that Mr. Tilt cites is
5 valid, we would have no problem with it.

6 THE COURT: All right. Then what I'm going to do is
7 this. That's consistent with the court's understanding of the
8 law, as well.

9 I have received the competing forms and the
10 objections. I'm simply going to consider the written
11 documentation, including the objections that have been filed,
12 and the court will enter an order.

13 In order to avoid any suggestion of continuing
14 proceedings, in violation of the removal restrictions, I'm
15 simply going to do that without further argument on the
16 objections. So I'm not going to hear further argument with
17 respect to the objections. I will consider them, and the court
18 will simply enter an order consistent with the court's intended
19 ruling, and then the matter will proceed consistent with the
20 restrictions on the removal.

21 Is there any objection to that procedure, Mr. Tilt,
22 at this point?

23 MR. TILT: I think that makes the most sense, Your
24 Honor.

25 THE COURT: Mr. Johnson?

1 MR. JOHNSON: No objection.

2 THE COURT: All right. Then we will do that, and I
3 will try and get that done as quickly as possible, and then
4 we'll address whatever we can, when we can, if that arises in
5 the future.

6 So thank you very much for your appearances counsel,
7 and all may be excused.

8 MR. JOHNSON: Thank you.

9 MR. TILT: Thank you, judge.

10 THE COURT: Thank you.

11 (Proceedings concluded.)
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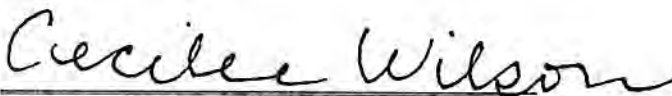
1 STATE OF UTAH)
2)
3 COUNTY OF SALT LAKE)

4 I, CECILEE WILSON, Certified Shorthand
5 Reporter for the State of Utah, certify:

6 That I received the audio recording in this
7 matter, that I transcribed it into typewriting, and that a
8 full, true, and correct transcription of said audio recording
9 so recorded and transcribed is set forth in the foregoing pages
10 inclusive, except where it is indicated that the recording was
11 inaudible.

12 I FURTHER CERTIFY that I am neither counsel
13 for nor related to any party to said action nor in anywise
14 interested in the outcome thereof.

15 Certified and dated this 3rd day of April,
16 2025.

17 
18 CECILEE WILSON, CSR, RDR, CRR
19 Certified Shorthand Reporter
20 for the State of Utah
21
22
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24
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1	certainly [1] - 3:23 circumstances [1] - 4:12 citation [1] - 5:18 cites [1] - 6:4 clerical [1] - 4:25 clients [1] - 3:8 competing [1] - 6:9 concluded [1] - 7:11 consider [2] - 6:10, 6:17 consistent [3] - 6:7, 6:18, 6:19 continuing [1] - 6:13 counsel [6] - 3:4, 3:7, 3:13, 3:21, 4:1, 7:6 COURT [8] - 3:4, 3:13, 5:14, 5:17, 6:6, 6:25, 7:2, 7:10 court [17] - 3:22, 3:25, 4:11, 4:13, 4:16, 4:22, 4:25, 5:2, 5:3, 5:5, 5:9, 5:10, 5:12, 6:1, 6:2, 6:12, 6:17 court's [3] - 5:11, 6:7, 6:18 courts [1] - 4:7 Creek [3] - 4:9, 4:16, 5:9 cut [1] - 4:13	exactly [1] - 5:8 exception [1] - 4:8 exclusively [1] - 4:6 excused [1] - 7:7	jurisdiction [2] - 4:6, 5:22	possible [1] - 7:3 posture [1] - 5:8 preliminary [1] - 6:1 problem [1] - 6:5 procedure [1] - 6:21 proceed [2] - 4:13, 6:19 proceeding [2] - 3:25, 4:1 proceedings [3] - 3:19, 6:14, 7:11 prohibition [1] - 4:12 proposals [1] - 3:17 proposed [2] - 3:15, 4:22
2	2007 [1] - 4:11 2025 [1] - 3:1 240908957 [1] - 3:7 28 [1] - 4:5 2d [1] - 4:10	F	law [3] - 4:9, 6:4, 6:8 legally [1] - 3:22 listening [1] - 5:23	
5	547 [1] - 4:10	G	March [1] - 3:1 matter [2] - 3:22, 6:19 merits [2] - 5:1, 6:3 ministerial [1] - 4:14 ministerially [1] - 5:10 most [1] - 6:23 motion [1] - 5:25 MR [9] - 3:9, 3:11, 4:4, 5:15, 5:18, 6:23, 7:1, 7:8, 7:9 Mulligan [1] - 3:6 Mulligans [1] - 3:10	
A	action [1] - 3:23 actions [1] - 4:14 add [1] - 5:17 address [1] - 7:4 addressed [1] - 3:18 adjudicated [1] - 5:1 administrative [1] - 5:6 affected [1] - 5:1 already-adjudicated [1] - 5:1 already-entered [1] - 5:11 alternate [1] - 3:17 Alum [2] - 3:6, 3:11 appearances [3] - 3:5, 3:7, 7:6 appreciate [1] - 3:5 argument [2] - 6:15, 6:16 arises [1] - 7:4 avoid [1] - 6:13	H	necessary [1] - 4:14 normally [1] - 4:4 note [1] - 3:7 notice [1] - 4:5 nullify [1] - 5:4 number [1] - 3:7	
B	Ben [1] - 3:11 bench [1] - 4:19 Bradley [1] - 3:9	I	objection [2] - 6:21, 7:1 objections [4] - 6:10, 6:11, 6:16, 6:17 of-record [1] - 3:24 once [1] - 3:22 one [1] - 5:19 order [12] - 3:15, 3:17, 3:20, 3:24, 4:17, 5:3, 5:12, 6:2, 6:3, 6:12, 6:13, 6:18 orders [1] - 4:22 otherwise [2] - 5:3, 6:4	
C	case [16] - 3:6, 3:23, 4:9, 4:11, 4:17, 4:18, 4:19, 4:21, 4:24, 5:5, 5:9, 5:10, 5:13, 5:16, 5:24, 6:4	J	page [1] - 4:10 pages [2] - 4:17, 4:24 particular [1] - 6:2 parties [2] - 4:21, 5:2 Pebble [3] - 4:9, 4:16, 5:9 point [3] - 5:18, 5:24, 6:22	
	D	hear [5] - 3:20, 3:25, 4:2, 4:3, 6:16 hearing [4] - 3:14, 3:16, 4:18, 4:20 hearings [1] - 5:5 heartburn [1] - 6:2 held [2] - 4:11, 4:18 hold [1] - 5:3 Homes [1] - 4:9 Honor [3] - 3:9, 4:4, 6:24		Q
	E	images [1] - 4:10 impact [1] - 3:19 inaudible [2] - 5:6, 5:15 including [2] - 4:9, 6:11 injunction [3] - 3:15, 3:20, 6:1 intend [1] - 4:13 intended [1] - 6:18 issue [4] - 3:18, 4:1, 5:2, 5:21 itself [1] - 5:9		quickly [1] - 7:3 quote [1] - 5:7
	deals [1] - 3:15 decision [1] - 5:6 decisions [1] - 5:21 defendants [1] - 5:4 disagreements [1] - 6:3 dispositive [1] - 5:4 disputed [1] - 5:2 district [2] - 4:10, 4:24 divested [1] - 5:22 document [1] - 4:14 documentation [1] - 6:11 done [1] - 7:3			R
	effectively [1] - 5:4 effort [1] - 5:21 enable [1] - 5:4 end [1] - 5:7 enter [2] - 6:12, 6:18 entered [2] - 4:23, 5:11 entering [1] - 6:2 entry [1] - 4:17 essentially [1] - 4:25	JOHNSON [4] - 3:11, 5:18, 7:1, 7:8 Johnson [4] - 3:11, 4:3, 5:17, 6:25 judge [1] - 7:9		reading [1] - 5:23 receipt [1] - 3:14 received [2] - 3:17, 6:9 recognized [3] - 4:9, 4:16, 5:10 record [1] - 3:24 reducing [1] - 5:10 removal [8] - 3:19, 4:6, 4:18, 4:20, 4:21, 5:23, 6:14, 6:20 remove [1] - 5:5 removed [1] - 3:22 request [1] - 3:14 respect [3] - 3:17, 3:19, 6:17 respective [1] - 3:8 restrictions [2] - 6:14, 6:20 Riverside [2] - 3:6, 3:12 Rock [2] - 3:6, 3:11 ruling [3] - 4:19, 5:11, 6:19 rulings [2] - 4:15, 5:4 rushing [1] - 5:5
				S
				sense [1] - 6:23 set [1] - 3:14 similar [1] - 4:12 simply [4] - 5:10, 6:10, 6:15, 6:18 sounds [2] - 5:18, 5:24 state [4] - 4:13, 5:2, 5:5, 5:12

steps [1] - 4:14
subject [1] - 3:16
submit [1] - 3:15
submitted [1] - 4:22
suggestion [1] - 6:13
supp [1] - 4:10

T

task [1] - 5:1
THE [8] - 3:4, 3:13,
5:14, 5:17, 6:6, 6:25,
7:2, 7:10
TILT [5] - 3:9, 4:4,
5:15, 6:23, 7:9
Tilt [1] - 3:9
tilt [3] - 4:2, 6:4, 6:21
tilt's [1] - 5:23
timing [1] - 5:20
try [1] - 7:3

U

U.S.C [1] - 4:5
under [1] - 4:5
upheld [1] - 5:12
Upstream [1] - 4:10
Utah [2] - 4:11, 4:25

V

valid [1] - 6:5
value [1] - 3:24
version [1] - 5:6
versus [2] - 3:6, 4:9
vested [1] - 4:6
violate [1] - 5:3
violation [2] - 5:12,
6:14

W

wish [1] - 5:17
writing [1] - 5:11
written [1] - 6:10